



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

February 24, 2015

Anthony W. McClure
13831 N. Ayrshire Circle
Camby, IN 46113

Re: Formal Complaint 15-FC-21; Alleged Violation of the Open Door Law and Access to Public Records Act by the Fire Department of Liberty Township, Inc.

Dear Mr. McClure,

This advisory opinion is in response to your formal complaint alleging certain members of the Fire Department of Liberty Township, Inc., ("FDLT") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. Seq.* and the Access to Public Records Act ("APRA") Ind. Code § 5-14-3-1 *et. seq.* FDLT has responded via counsel, William S. Frankel, IV, Esq. The response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on January 21, 2015.

BACKGROUND

Your complaint dated January 23, 2015 alleges several violations of the Open Door Law and Access to Public Records Act by the FDLT. The complaint alleges a failure to provide notice of an executive session, dated January 12, 2015 in violation of I.C. 5-14-1.5-6.1. Subsequently, you attempted to obtain records from this session and were denied access to these records on January 22, 2015 in violation of Ind. Code § 5-14-3 *et. al.*

In your complaint, you allege you were informed a meeting of FDLT administration had occurred prior to the general meeting on January 12, 2015. On January 15, 2015 you requested the minutes be sent to you, a request you repeated on January 18, 2015. The FDLT secretary responded to your request on January 22, 2015 informing you that your request had been sent to the board president.

On January 23, 2015 you received an email from the Board of Directors President, claiming no formal executive meeting had taken place and that it was merely a brief conversation regarding a reprimand you received from the Chief of the FDLT.

FDLT's counsel, William S. Frankel, Esq., responded to your complaint on February 5, 2015. Counsel concedes a meeting occurred, specifically about alleged misconduct on your part. FDLT merely intended to make the members aware of the situation and were unaware of the requirements to provide notice or to provide records. The FDLT secretary prepared the requested records which were enclosed.

ANALYSIS

It is the intent of the Open Door Law (ODL) the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. See Ind. Code § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. See Ind. Code § 5-14-1.5-3(a).

The FDLT concedes there was a meeting which took place which amounted to an executive session. Although no final action was taken, official action took place by receiving information about personnel issues. These discussions necessitate proper notice under the Open Door Law. Notice requirements for executive sessions can be found at Ind. Code § 5-14-1.5-6.1(d) and must state the specific statutory authorization allowing the executive session (48) forty-eight hours in advance of the meeting.

Furthermore, according to Ind. Code § 5-14-1.5-6.1(b)(4):

The requirements stated in section 4 of this chapter for memoranda and minutes being made available to the public are modified as to executive sessions in that the memoranda and minutes must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given. The governing body shall certify by a statement in the memoranda and minutes of the governing body that no subject matter was discussed in the executive session other than the subject matter specified in the public notice.

The oversight does not appear to be intentional; however, it is my expectation that public agencies follow the letter of the law when conducting executive sessions. As the only closed-door meeting allowable under the Open Door Law, strict scrutiny is applied when determining whether there has been a violation. Substantial compliance is not sufficient; technical compliance should be the standard.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor that the Fire Department of Liberty Township violated the Open Door Law.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', with a long, sweeping underline that extends to the left.

Luke H. Britt
Public Access Counselor

Cc: William S. Frankel, IV, Esq.